

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

JACK LEE PERRY,

Plaintiff,

v.

BREVICK, et al.,

Defendants.

No. 2:21-cv-0065 WBS KJN P

ORDER

Plaintiff is a state prisoner, proceeding pro se, in an action brought under 42 U.S.C. § 1983. Pending before the court is plaintiff's January 3, 2022 motion for appointment of counsel and motion for an extension of time, construed as a motion to modify the scheduling order. (ECF No. 30.) Defendants did not file a response to these requests.

Motion for Appointment of Counsel

District courts lack authority to require counsel to represent indigent prisoners in section 1983 cases. Mallard v. United States Dist. Court, 490 U.S. 296, 298 (1989). In exceptional circumstances, the court may request an attorney to voluntarily represent such a plaintiff. See 28 U.S.C. § 1915(e)(1). Terrell v. Brewer, 935 F.2d 1015, 1017 (9th Cir. 1991); Wood v. Housewright, 900 F.2d 1332, 1335-36 (9th Cir. 1990). When determining whether "exceptional circumstances" exist, the court must consider plaintiff's likelihood of success on the merits as well as the ability of the plaintiff to articulate his claims pro se in light of the complexity of the

1 legal issues involved. Palmer v. Valdez, 560 F.3d 965, 970 (9th Cir. 2009) (district court did not  
2 abuse discretion in declining to appoint counsel). The burden of demonstrating exceptional  
3 circumstances is on the plaintiff. Id. Circumstances common to most prisoners, such as lack of  
4 legal education and limited law library access, do not establish exceptional circumstances that  
5 warrant a request for voluntary assistance of counsel.

6 Having considered the factors under Palmer, the court finds that plaintiff failed to meet his  
7 burden of demonstrating exceptional circumstances warranting the appointment of counsel at this  
8 time.

9 Motion to Modify the Scheduling Order

10 Modification of a scheduling order requires a showing of good cause, Fed.R.Civ.P. 16(b),  
11 and good cause requires a showing of due diligence, Johnson v. Mammoth Recreations, Inc., 975  
12 F.2d 604, 609 (9th Cir.1992).

13 The discovery deadline is March 4, 2022. (ECF No. 29 at 5.) The dispositive motion  
14 deadline is May 27, 2022. (Id.) In the pending motion, plaintiff requests that these deadlines be  
15 extended by 120 days. (ECF No. 30 at 5.) The grounds of this request appear to be the same as  
16 the grounds for the motion for appointment of counsel. In particular, plaintiff alleges that he has  
17 serious health problems which impact his ability to litigate this action, including congestive heart  
18 failure. (Id. at 1.) Plaintiff alleges inadequate law library access due to the COVID-19 pandemic.  
19 (Id. at 2-3.) Plaintiff also alleges difficulty in contacting inmate witnesses due to staff shortages  
20 caused by the COVID-19 pandemic. (Id. at 4.)

21 Good cause appearing plaintiff's unopposed motion to modify the scheduling order is  
22 granted. However, the discovery and dispositive motion deadlines are extended by 90 days rather  
23 than 120 days, as requested.

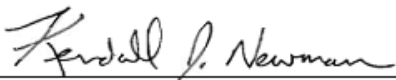
24 Accordingly, IT IS HEREBY ORDERED that:

- 25 1. Plaintiff's motion for the appointment of counsel (ECF No. 30) is denied without  
26 prejudice;
- 27 2. Plaintiff's motion for an extension of time, construed as a motion to modify the  
28 scheduling order (ECF 30), is granted;

3. The March 4, 2022 discovery deadline is vacated and reset to June 6, 2022; any motions necessary to compel discovery shall be filed by June 6, 2022; all requests for discovery pursuant to Federal Rules of Civil Procedure 31, 33, 34 or 36 shall be served not later than sixty days prior to June 6, 2022;

4. The May 27, 2022 dispositive motion deadline is vacated and reset to August 26, 2022.

Dated: February 1, 2022

  
KENDALL J. NEWMAN  
UNITED STATES MAGISTRATE JUDGE

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